

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Implementation of Section 9)
of the Communications Act)

MD Docket No. 94-19

Assessment and Collection of)
Regulatory Fees for the 1994)
Fiscal Year)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF CLAIRCOM COMMUNICATIONS GROUP, L.P.

Claircom Communications Group, L.P. ("Claircom"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. §§ 1.415 and 1.419 (1992), hereby submits its Comments to the Notice of Proposed Rulemaking in the above-referenced matter. See Implementation of Section 9 of the Communications Act; Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, MD Docket No. 94-19, FCC 94-46 (released March 11, 1994) ("Notice").

I. INTRODUCTION

The Omnibus Budget Reconciliation Act of 1993 (the "1993 Budget Act") authorizes the Commission to assess and collect annual regulatory fees to recover the costs incurred in carrying out its functions, and the statute establishes a Schedule of

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Regulatory Fees as a basis for fee accounts.^{1/} The Schedule of Regulatory Fees lists various fee categories for the FCC's Private Radio Bureau, Mass Media Bureau, and Common Carrier Bureau and specifies an annual fee amount for each category. 47 U.S.C. § 159(g). These fees are required to be adjusted to take into account factors that are reasonably related to the benefits received by the licensee from the Commission's activities. Id. § 159(b)(1)(A). Relevant adjustment factors include service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest. Id.

The Commission has proposed that the regulatory fees for common carriers be based on the size of the licensee's communications operation as determined by the number of stations, subscribers, access lines, or antennas. Notice at ¶ 78. For each common carrier licensee authorized under Part 22 of the FCC's rules, the Commission's proposed fee schedule establishes an annual fee of \$60 per 1,000 subscribers or any portion thereof. Id. at ¶ 80. As a provider of air-to-ground ("ATG") service licensed under Part 22, the proposed annual fee of \$60 per 1,000 subscribers would apply to Claircom. Thus, Claircom is directly affected by this proposal.

^{1/} Pub. L. No. 103-66, Title VI, § 6002(a), 107 Stat. 397 (1993). The 1993 Budget Act added a new Section 9 to the Communications Act of 1934, as amended, (the "Act"), 47 U.S.C. § 159 (1993).

In its Notice, the Commission requested comments regarding whether proposed fee multipliers were reasonably related to the benefits provided to licensees by the Commission. The Commission also requested "specific alternatives" to its fee proposals. Id. at ¶ 78. Claircom submits that the proposed fee of \$60 per 1,000 subscribers will most reasonably reflect the benefits Claircom receives from its ATG licenses if the following definitions of "subscriber" are adopted in the ATG context. With respect to ATG service on commercial airlines, the number of subscribers should equal the number of transceivers installed on each commercial aircraft. With respect to ATG service on private aircraft, the number of subscribers should equal the number of private aircraft receiving ATG service. Claircom also requests that the Commission require ATG licensees to pay the regulatory fee on an annual basis at the close of the calendar year.

II. DISCUSSION

In its Notice, the Commission combined cellular, land-based and ATG mobile telephone or paging services for the purpose of proposing a regulatory fee of \$60 per 1,000 subscribers. However, consumers use these services differently, and ATG service has unique attributes distinguishing it from cellular and land-based mobile and paging services. ATG service is distinct because the maximum possible usage in an aircraft at any one time is determined not by the number of available handsets or interested users on board but by the number of transceivers on

the aircraft. Consequently, in the ATG service, the definition of subscriber must take into account the service's unique market and operating circumstances.

ATG service is divided into two principal markets. First, ATG licensees provide service to commercial aircraft. In this market, the ATG licensee contracts with the individual airline to place the licensee's ATG transceivers and handsets in a number of aircraft for use by the airline's passengers. The second market concerns general aviation aircraft. In this market, the ATG licensee and the owner or operator of the general aviation aircraft enter an agreement pursuant to which the licensee provides ATG service to the private aircraft. The distinction between these markets is relevant to the definition of "subscriber" in the calculation of regulatory fees because ATG service to general aviation aircraft involves a direct link to the ultimate consumer of the service, while ATG service to commercial aircraft involves an indirect link.

A. ATG Service to Commercial Aircraft

First, with respect to ATG service to commercial aircraft, Claircom submits that the number of subscribers should be defined by the number of transceivers installed on each commercial aircraft. Unlike the cellular and land mobile and paging services, merely counting the number of ATG callers on commercial aircraft is not an accurate measurement of subscribers.

For example, in the cellular radio telephone service, consumers use their cellular telephones on a nearly continuous basis over a substantial period of time. In contrast, an ATG consumer on a commercial aircraft will use the ATG service at best intermittently over brief periods of time. Unlike most cellular consumers, who are nearly constantly in proximity to an automobile or hand-held cellular telephone, ATG consumers are aboard commercial aircraft infrequently, and these trips are of a relatively short duration.

Defining the number of subscribers as the number of transceivers on board a commercial aircraft most accurately reflects the benefit of the underlying ATG license because the number of transceivers establishes the maximum capacity of any ATG system. In other words, if a commercial aircraft contains two transceivers, that aircraft may not be used for more than two calls at any one time. For subscriber calculations, utilizing the number of transceivers is more accurate than counting the number of handsets on board because not all handsets can be used simultaneously. Defining an ATG subscriber by the number of commercial aircraft, on the other hand, may underestimate the value of an ATG license because multiple transceivers can be placed on a single aircraft. Finally, defining an ATG subscriber by the number of ATG callers does not reflect accurately the value of an ATG license because such callers use the ATG service infrequently and for short periods of time. Thus, the benefits

of an ATG license are most accurately reflected by defining an ATG subscriber by the maximum use of the ATG service that can be made on any individual commercial aircraft, which is equivalent to the number of transceivers on board.

B. ATG Service to General Aviation Aircraft

Second, with respect to general aviation aircraft, Claircom requests that the definition of subscriber equal the number of private aircraft with which an ATG licensee has service agreements. Unlike commercial aircraft, ATG service to general aviation aircraft involves a direct relationship with the aircraft owner or operator, who is also the ultimate user of the ATG service. Thus, in the context of general aviation aircraft, usage is aligned closely with the number of aircraft, and this definition of subscriber most accurately reflects the benefit of the ATG license.

C. Regulatory Fee Payment Schedule

Finally, Claircom requests that ATG licensees be permitted to pay the annual regulatory fee at the end of the calendar year. Claircom agrees with the Commission's tentative decision that ATG regulatory fees are "standard" amounts. See Notice at ¶¶ 27, 79. Claircom also supports the Commission's proposal to require full payment of standard fees by a date certain each year. Id. at ¶ 27. However, Claircom requests that the payment date occur at the end of the calendar year rather than "as early as possible before the end of the fiscal year." Id. A calendar-year payment

date provides a reasonable and easily administered benchmark by which ATG licensees can calculate the fee amount based on the number of subscribers. In addition, by setting a payment date late in the calendar year, the regulatory fees paid will most closely reflect the benefit underlying an ATG license, which normally is renewed at that time.

III. CONCLUSION

For the foregoing reasons, Claircom requests that the Commission adopt the following definitions of "subscriber" in the ATG service for the purpose of assessing regulatory fees. With respect to ATG service to commercial aircraft, the subscriber number should be determined by the number of transceivers on an aircraft. With respect to ATG service to general aviation aircraft, the number of subscribers should equal the number of such private aircraft. Finally, Claircom also requests that the regulatory fee be paid once annually at the end of the calendar year.

Respectfully submitted,

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